

Testimony of

# Mr. Scott Cleland

June 18, 2003

Mr. Chairman, thank you for the honor of testifying before your Subcommittee and for the Subcommittee's interest in an independent analyst perspective on the NewsCorp/Hughes proposed merger.

I am Scott Cleland, a telecom-media investment analyst with expertise in antitrust and mergers.

? I am also founder and CEO of the Precursor Group®, an independent research broker-dealer, which provides investment research to institutional investors covering the technology, telecom and media sectors.

o Precursor's business interests are aligned with investors' interests - actual and perceived.

o We do no investment banking for companies; do not manage money or trade for proprietary gain; and our researchers may not trade individual stocks.

? In addition, I am Chairman of the Investors' Research Association, an association of 26 independent research providers that work for investors and do not have investment banking conflicts of interest.

My overall view is that this merger does not anti-competitively harm consumers or competitors. While this merger does not raise serious antitrust problems, it does raise significant public policy issues that would best be addressed by the FCC in an industry-wide rulemaking or by Congress in legislation if the FCC or Congress were so inclined. As an investment analyst, we have advised our clients that we believe this merger will create value for investors.

My testimony has three parts:

- A. Understanding the Industry Dynamics Underlying This Merger
- B. Why This Merger Is Not an Antitrust Problem, but a Regulatory Issue
- C. Understanding the Regulatory Context

A. Understanding the Industry Dynamics Underlying This Merger:

As an independent investment analyst, I view this merger as a logical next step for these companies. It better positions them to compete going forward, while not harming consumers. The combination of NewsCorp's content with DirecTV's DBS distribution platform solves several critically important and thorny strategic problems for NewsCorp.

1. Analog to Digital Migration: In one fell swoop, NewsCorp becomes a fully digital distributor, legally bypassing the snail-pace, snake-bit, all-cost-little-gain, migration of over-the-air broadcast analog businesses to HDTV.
2. Regional to National Distribution: This merger enables NewsCorp to legally bypass the FCC media ownership limit that arbitrarily caps broadcast ownership to 45% of the nation's footprint, and to become a more valuable national distributor of programming.
3. Advertising to Subscription Model: The merger enables NewsCorp to transform from a less valuable advertising-dependent model, which is sensitive to economic cycles, to a more valuable subscription-based model, which is not economic cycle sensitive.
4. Single Channel to Multi-channel: The merger enables NewsCorp to escape the island of one big broadcast channel to leveraging many channels, which enables more narrowcasting flexibility to meet the clear demand trend for more niche programming.
5. Un-secure to More Secure Platform: The merger enables more of Fox's programming to be transmitted over the more secure and controlled DBS distribution platform and less over the over-the-air broadcast platform, which is increasingly vulnerable to piracy from Napster-like file-sharing and to pricing pressure from ad-zapping via TIVO-like technology.
6. Depreciating to Appreciating Business Model: This merger enables NewsCorp to switch horses mid-race from the tired-old over-the-air broadcast model, which is near to being put out to pasture, to the new DBS thoroughbred, which is in its prime.

7. Un-leveraged to Leveraged Distribution: NewsCorp understands that negotiating leverage increases dramatically with other programmers, if you are also a major distributor.

Mr. Murdoch has had the strategic vision of integrating DBS with content for over six years. I remain very surprised at the lack of similar vision at Disney and Viacom. They remain wedded to yesterday's technology without a workable vision to thrive in a fully digital world. I personally will be surprised if one of the other big broadcast players does not eventually merge with Echostar to enjoy the same strategic benefits NewsCorp will gain by merging with DirecTV.

#### B. Why This Merger Is Not an Antitrust Problem, but a Regulatory Issue:

Unlike the Echostar-DirecTV merger, which Precursor immediately advised investors would not get approved by anti-trust authorities, Precursor's antitrust analysis of this deal has surfaced little antitrust problems that would threaten government approval. We have advised investors that there is a very low level of approval risk with this deal. None of the competitive issues or concerns around this merger raises serious or un-resolvable antitrust problems. There are no significant horizontal concentration issues, and the vertical issues are dramatically less problematic than the much larger Comcast-AT&T Broadband merger, which did not trigger antitrust ire.

Moreover, NewsCorp has a consistent history of being the type of competitor that antitrust authorities actually like - a maverick competitor that is unwilling to play the friendly oligopolistic game of not upsetting the status quo. NewsCorp is the type of aggressive disruptive competitor that generally serves consumer interests well.

The potential competitive problems this merger could raise are not antitrust issues but more appropriately legislative or regulatory issues. That's because the DBS industry is an artificial government-created and licensed market that needed the landmark program access protections from predatory cable practices in order to become a viable industry. The government initially licensed spectrum for four DBS providers, but the market would only fund and support two: DirecTV and Echostar.

#### C. Understanding the Regulatory Context:

I would argue that NewsCorp's preemptive proposal to subject itself to the program access regulations, that cable is subjected to, tells us more about the state of the programming market than anything else. What the commitment to program access tells us is that DBS still needs program access protection from cable more than it seeks to gain any leverage over other programmers. In a perfect competitive world, a hard-nosed negotiator like NewsCorp would never negotiate with itself and preemptively make major concessions like agreeing to program access. NewsCorp's tactics tell us a lot about how important program access is to DBS. Without it, they would be in trouble competitively. It also tells us that DBS remains in a subordinate competitive position to cable, further underscoring that this merger is not an antitrust issue.

As for the discussion about rural broadband service by DBS, Congress needs to appreciate that satellite is a badly inferior architecture for delivering interactive real time broadband/data applications or telephony. Precursor expects satellite broadband to be a minor player in the broadband landscape offering service only where there is no telephone or cable provider interested in seriously serving a particular rural community.

Thank you again Mr. Chairman for the honor and opportunity to testify before your Subcommittee on this important matter.